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NOV 14 2008

In re Application of :
Goddard et al. : LETTER REGARDING PATENT
Application No. 10/063,518 : TERM ADJUSTMENT
Filed: May 1, 2002 :
Attorney Docket No. 10466/303 :

This letter is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT CALCULATION," filed July 16, 2008. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the determination of patent term adjustment is granted.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **778 days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

Applicants state no basis for the request for review of the patent term adjustment.

A review of the application history reveals that the Office incorrectly entered the date of receipt of the reply to the final Office action in the form of a Request for Continued Examination (RCE) and submission as September 20, 2005, instead of September 30, 2005.¹ Thus, the date of September 30, 2005,

¹ The RCE contains a USPTO date-stamp of September 30, 2005.

and not September 20, 2005, should have been used for calculating PTA.

In accordance with 37 CFR 1.704(b), the period of adjustment of the term of the patent should be reduced by 13 days (not 3 days), the number of days in the period beginning on the day after the date that is three months after the date of mailing of the Office action under 35 U.S.C. 132, September 18, 2005, and ending on the date the reply was filed, September 30, 2005. Accordingly, the period of reduction of 3 days will be removed and a period of reduction of 13 days will be entered.

Additionally, applicants should have been assessed a delay pursuant to 37 CFR 1.704(c)(8) for the filing of an Information Disclosure Statement (IDS) on December 2, 2005. It is undisputed that after filing a response on September 30, 2005, applicants filed an IDS on December 2, 2005. The record does not support a conclusion that the examiner expressly requested the IDS. Further, a review of the IDS, filed December 2, 2005, reveals that applicants did not include a statement under 37 CFR 1.704(d).² Thus, applicants failed to engage in reasonable efforts to conclude prosecution of the application. The period of adjustment of the term of the patent should have been reduced by an additional 63 days, the number of days beginning on the day after the date the initial reply was filed, October 1, 2005, and ending on the date that the IDS was filed, December 2, 2005. See 37 CFR 1.704(c)(8). Accordingly, an additional period of reduction of 63 days will be entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is 778 days (940 days of Office delay - 162 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee as set forth in 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR §§ 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR § 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in

the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PAIR screen

² Pursuant to 37 CFR 1.704(d):

A paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This thirty-day period is not extendable.

Day : Thursday
Date: 11/13/2008

PALM INTRANET

Time: 16:29:52

PTA Calculations for Application: 10/063518			
Application Filing Date:	05/01/2002	PTO Delay (PTO):	940
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	89
Post-Issue Petitions:	0	Total PTA (days):	778
PTO Delay Adjustment:	-73		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
88	11/13/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	3		
87	11/13/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		63	
86	11/13/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		13	
77	05/30/2008	MAIL NOTICE OF ALLOWANCE	360		55
76	04/15/2008	ISSUE REVISION COMPLETED			
75	04/15/2008	DOCUMENT VERIFICATION			
74	04/15/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
73	04/15/2008	CASE DOCKETED TO EXAMINER IN GAU			
72	04/11/2008	EXAMINER'S AMENDMENT COMMUNICATION			
71	04/11/2008	NOTICE OF ALLOWABILITY			
70	04/26/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
66	02/05/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
65	03/25/2008	MAIL-PETITION DECISION - GRANTED IN PART			
64	03/25/2008	PETITION DECISION - GRANTED IN PART			
63	04/26/2007	PETITION ENTERED			
62	11/21/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
61	11/21/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
59.7	04/26/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		80	55
59	04/26/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
58	02/05/2007	REFERENCE CAPTURE ON IDS			
		INFORMATION DISCLOSURE STATEMENT (IDS)			

57.7	02/05/2007	FILED			
57	02/05/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
56	03/03/2007	DATE FORWARDED TO EXAMINER			
55	02/05/2007	RESPONSE AFTER NON-FINAL ACTION		3	54
54	11/02/2006	MAIL NON-FINAL REJECTION			
53	10/30/2006	NON-FINAL REJECTION			
52	09/05/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
51.7	09/05/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
51	09/05/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	09/09/2006	DATE FORWARDED TO EXAMINER			
49	09/05/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
48	09/09/2006	DATE FORWARDED TO EXAMINER			
47	09/05/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)			
46	09/09/2006	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
45	09/05/2006	WORKFLOW - REQUEST FOR RCE - BEGIN			
44	06/06/2006	MAIL FINAL REJECTION (PTOL - 326)			
43	05/30/2006	FINAL REJECTION			
42	09/10/2002	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
41	03/06/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
40	09/10/2002	REFERENCE CAPTURE ON IDS			
39.7	09/10/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
39	09/10/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
38.7	03/06/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	34
38	03/06/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
37	12/02/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
36	03/06/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			

35	03/15/2006	DATE FORWARDED TO EXAMINER			
34	03/06/2006	RESPONSE AFTER NON-FINAL ACTION		1	32
33.7	12/02/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
33	12/02/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	12/05/2005	MAIL NON-FINAL REJECTION			
31	11/14/2005	NON-FINAL REJECTION			
30	09/30/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
29.7	09/30/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
29	09/30/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
28	10/18/2005	DATE FORWARDED TO EXAMINER			
27	09/30/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
26	10/18/2005	DATE FORWARDED TO EXAMINER			
25	09/20/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		3	20
24	10/18/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
23	09/30/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
22	07/05/2005	CASE DOCKETED TO EXAMINER IN GAU			
21	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
20	06/17/2005	MAIL FINAL REJECTION (PTOL - 326)			
19	06/15/2005	FINAL REJECTION			
18	05/02/2005	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
17.7	05/02/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	15
17	05/02/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
16	05/13/2005	DATE FORWARDED TO EXAMINER			
15	05/02/2005	RESPONSE AFTER NON-FINAL ACTION		2	14
14	01/31/2005	MAIL NON-FINAL REJECTION	580		-1
13	01/27/2005	NON-FINAL REJECTION			
12	01/14/2005	CASE DOCKETED TO EXAMINER IN GAU			
11	02/11/2004	CASE DOCKETED TO EXAMINER IN GAU			
10	09/23/2003	IFW TSS PROCESSING BY TECH CENTER			

		COMPLETE			
9	10/04/2002	CASE DOCKETED TO EXAMINER IN GAU			
8	09/23/2002	APPLICATION DISPATCHED FROM OIPE			
7	09/20/2002	APPLICATION IS NOW COMPLETE			
5	05/07/2002	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
4	05/17/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	05/15/2002	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	05/01/2002	ELECTRONIC FILING OF ORIGINAL APPLICATION PAPERS			
1	05/01/2002	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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